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Cedar Trading Sdn Bhd v Dong Ah Construction Industrial Co Ltd (Standard Chartered Bank, garnishee)

HIGH COURT (KUCHING) — SUIT NO 22–63–98–III(I)
IAN CHIN J
23 NOVEMBER 1998

B

Civil Procedure — *Judgments and orders — Setting aside, application for — Application to set aside default judgment filed within time — Application served outside time allowed — Whether application was out of time — Whether time for service of application should be abridged to validate service — Rules of the High Court 1980 O 42 r 13*

C

Civil Procedure — *Default judgment — Setting aside — Default judgment entered in excess of sum due — Defence on merits — Delay not inordinate — Whether proper to vary judgment in default to take into account part payment — Whether default judgment should be set aside*

D

Civil Procedure — *Judgments and orders — Setting aside, application for — Garnishee order absolute — garnishee order not served with show cause notice — Defendant had no opportunity to dispute garnishee proceedings — Whether court can set aside order under inherent jurisdiction*

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The plaintiff leased heavy equipment and supplied manpower to the defendant. On 17 March 1998, the plaintiff issued a statement of account to the defendant for RM768,024.05 which the defendant refused to pay. The plaintiff then served on the defendant a writ claiming for the said sum, prejudgment and after judgment interest and costs. Before the writ was served, the defendant paid the plaintiff a sum of RM101,642.22. Judgment in default of appearance was

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entered on 14 May 1998 but only for the said sum of RM768,024.05 without the interest. On 5 June 1998, the plaintiff sought an order that the garnishee satisfied the judgment sum and interest of RM28,160 and further interest. An order in terms was later granted. A garnishee order to show cause was then issued against the garnishee and this

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resulted in the senior assistant registrar ordering the garnishee to satisfy the judgment in the several sums mentioned despite the objection of the garnishee. However, the defendant filed two applications to set aside the judgment in default of appearance and the various orders made in the garnishee proceedings. At the hearing of the two applications, counsel for the plaintiff raised two preliminary

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objections, ie that: (i) the application to set aside the default judgment was out of time; and (ii) the application to set aside the garnishee order was not provided under O 49 of the Rules of the High Court 1980 ('the RHC').

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Held, allowing the defendant's applications:

(1) Order 42 r 13 of the RHC provides that an application to set aside a default judgment must be made within 30 days of the receipt of the judgment. Judgment in default was served on the defendant on 19 June 1998 and the summons in chambers to set aside the

judgment in default was taken out on 18 July 1998, but it was not served on the plaintiff until 29 July 1998. The said rule requires the application not only to be made within the said 30 days but that it must also be served within the said 30 days. A

When the court exercises its inherent jurisdiction, it is not fettered by the RHC, such as the time laid down for applying to set aside the order. Consideration was given to the fact that the application to set aside the default judgment was filed within time, thus the time regarding the service of the application was abridged so as to validate the service (see pp 69G–I, 70A, D and 71E–F). B

(2) On the evidence, the default judgment was entered for a sum in excess of what was due. As the defendant had a defence on the merits, and the delay in this case was not inordinate, it was not proper to vary the judgment in default to take into account the part payment. Therefore, the default judgment was wholly set aside (see p 72C–D). C

(3) Although O 49 of the RHC does not provide for an application to vary or set aside a garnishee order made absolute, it was not improper for the defendant to apply to set aside the garnishee order in the instant case as it was not served with the show cause notice. At the hearing before the senior assistant registrar, the defendant was not represented and it had no opportunity to dispute the garnishee proceedings. Under O 92 r 4 of the RHC, the court can hear the defendant's application under its inherent powers and make any order as may be necessary to prevent injustice or an abuse of the process of the court. The garnishee order was, therefore, set aside (see pp 73B–D and 74B–C). D E

(4) Statutory interest can be claimed irrespective whether the same had been stated to be payable in the judgment. Therefore, in so far as the garnishee order provided for payment of statutory interest, there was no question of irregularity. However, it also provided for prejudgment interest which the default judgment did not award and this was not in accordance with O 49 r 1 of the RHC. Since the garnishee order was for an amount in excess of the default judgment, it was irregular (see p 74E–G). F G

[Bahasa Malaysia summary

Plaintif telah memajak peralatan berat dan membekalkan sumber manusia kepada defendan. Pada 17 Mac 1998, plaintif mengeluarkan suatu pernyataan akaun kepada defendan untuk jumlah RM768,024.05 yang enggan dibayar oleh defendan. Plaintif kemudiannya menyampaikan writ kepada defendan yang menuntut jumlah tersebut, faedah dan kos pra-penghakiman dan selepas penghakiman. Sebelum writ disampaikan, defendan telah membayar plaintif jumlah sebanyak RM101,642.22. Penghakiman ingkar kemasukan kehadiran telah dimasukkan pada 14 Mei 1998 tetapi hanya untuk jumlah sebanyak RM768,024.05 tanpa faedah. Pada H I

A 5 Jun 1998, plaintif meminta suatu perintah bahawa pihak yang digarnis memenuhi jumlah dan faedah penghakiman sebanyak RM28,160 dan faedah selanjutnya. Suatu perintah seperti dikehendaki kemudiannya diberikan. Perintah pihak yang digarnis untuk menunjuk sebab seterusnya dikeluarkan terhadap pihak yang digarnis dan ini meyebabkan penolong kanan pendaftar memerintah B supaya pihak yang digarnis memenuhi penghakiman dalam jumlah yang disebut meskipun pihak yang digarnis telah membantah. Namun demikian, defendan telah memfailkan dua permohonan untuk mengetepikan penghakiman ingkar kemasukan kehadiran dan pelbagai perintah yang dibuat dalam prosiding menggarnis. Di C pembicaraan dua permohonan itu, peguam plaintif membangkitkan dua bantahan permulaan, iaitu bahawa: (i) permohonan untuk mengetepikan penghkaiman ingkar adalah di luar masa; dan (ii) permohonan untuk mengetepikan perintah menggarnis tidak diperuntukkan di bawah A 49 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT').

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Diputuskan, membenarkan permohonan-permohonan defendan:

(1) Aturan 42 k 13 KMT memperuntukkan bahawa permohonan untuk mengetepikan suatu penghakiman ingkar mestilah dibuat dalam tempoh 30 hari dari penerimaan penghakiman. E Penghakiman ingkar telah disampaikan kepada defendan pada 19 Jun 1998 dan saman dalam kamar untuk mengetepikan penghakiman ingkar telah diambil pada 18 Julai 1998, tetapi ia tidak disampaikan kepada plaintif sehingga 29 Julai 1998. Kaedah ini menghendaki permohonan dibuat bukan sahaja dalam tempoh 30 hari tetapi ia juga mestilah disampaikan dalam tempoh 30 hari.

F Apabila mahkamah melaksanakan bidang kuasa sedia adanya, ia tidak dibelenggu oleh KMT, seperti masa yang ditetapkan untuk permohonan mengetepikan perintah. Pertimbangan telah diberikan kepada hakikat bahawa permohonan untuk mengetepikan penghakiman ingkar difailkan G di luar masa, justeru itu masa berhubung dengan penyampaian permohonan telah disingkatkan agar menjadikan penyampaian itu sah (lihat ms 69G–I, 70A, D dan 71E–F).

(2) Atas keterangan, penghakiman ingkar telah dimasukkan untuk jumlah yang melebihi apa yang harus dibayar. Oleh kerana defendan mempunyai pembelaan atas merit, dan kelewatan H dalam kes ini tidak melampau, adalah tidak wajar untuk mengubah penghakiman ingkar supaya mengambil kira sebahagian bayaran itu. Maka, penghakiman ingkar tersebut diketepikan secara keseluruhan (lihat ms 72C–D).

(3) Walaupun A 49 KMT tidak membuat peruntukan untuk I permohonan bagi mengubah atau mengetepikan perintah menggarnis yang dijadikan muktamad, ia bukanlah tidak wajar untuk defendan memohon supaya perintah menggarnis diketepikan dalam kes ini kerana ia tidak disampaikan dengan

notis tunjuk sebab. Di pembicaraan di hadapan penolong kanan pendaftar, the defendan tidak diwakili dan ia tidak berpeluang mempertikaikan prosiding menggarnis. Di bawah A 92 k 4 KMT, mahkamah boleh mendengar permohonan defendan di bawah kuasa sedia ada dan membuat sebarang perintah yang perlu bagi mencegah ketidakadilan atau penyalahgunaan proses mahkamah. Oleh itu, perintah menggarnis diketepikan (lihat ms 73B–D dan 74B–C).

(4) Kepentingan statutori boleh dituntut tidak mengira sama ada the same telah dinyatakan harus dibayar dalam penghakiman. Maka, perintah menggarnis membuat peruntukan untuk bayaran faedah statutori, tiada persoalan mengenai luar aturan. Walau bagaimanapun, ia juga membuat peruntukan untuk faedah pra-penghakiman yang tidak diawardkan oleh penghakiman ingkar dan ini tidak mematuhi A 49 k 1 KMT. Memandangkan perintah menggarnis adalah amaun yang melebihi penghakiman ingkar, ia adalah luar aturan (lihat ms 74E–G).]

Cases referred to

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393 (refd)

Hongkong and Shanghai Banking Corp v Goh Su Liat (Telecommunication Authority of Singapore, garnishee) [1986] 2 MLJ 86

Malayan United Finance Bhd, Johore Bahru v Liew Yet Lan [1990] 1 MLJ 317

Perwira Habib Bank Malaysia Bhd v Lum Choon Realty Sdn Bhd & Ors [1992] 3 CLJ 263 (refd)

Pui Kueh Thai & Anor v South East Asia Insurance Bhd Originating Summons No 24–148-97–I (High Court, Kuching) (refd)

Legislation referred to

Rules of the High Court 1980 O 42 r 13, O 49, O 56 r 1, O 92 r 4

Lim Heng Choo (*Lim & Lim*) for the plaintiff.
Ivan Ong (*Hamzah & Ong*) for the defendant.

Ian Chin J:

Introduction

The matter herein concerns two applications by Dong Ah Construction Industrial Co Ltd ('the defendant'), one to set aside the default judgment entered against them and the other to set aside the garnishee order. I heard both applications together.

Brief facts

Cedar Trading Sdn Bhd ('the plaintiff') leased heavy equipment and supplied manpower to the defendant and this resulted in the plaintiff on

17 March 1998 issuing a statement of account to the defendant for RM768,024.05 which the defendant refused to pay. The plaintiff then on 14 April 1998 served on the defendant a writ claiming for the said sum, prejudgment and after judgment interest at 8% pa from 30 October 1997 to date of payment and costs. Before the writ was served, the defendant paid the plaintiff a sum of RM101,642.22 on 9 April 1998. Judgment in default of appearance was entered on 14 May 1998 but only for the said sum of RM768,024.05 without the interest. On 5 June 1998, the plaintiff took out an ex parte summons in chambers seeking an order that, inter alia, Standard Chartered Bank ('the garnishee') satisfy the judgment sum and interest of RM28,160 (calculated at 8% pa on the judgment sum from 30 October 1997 to 15 May 1998) and further interest at RM5,120.16 per month from 15 May 1998 until final payment). An order in terms was granted on 12 June 1998. On 20 June 1998, a garnishee order to show cause was issued against the garnishee and this resulted in the senior assistant registrar on 3 July ordering the garnishee to satisfy the judgment in the several sums mentioned despite the objection of the garnishee. A notice of appeal to judge in chambers was then filed on 9 July by the garnishee against the said order of the senior assistant registrar but the appeal was withdrawn, the garnishee not wishing any more part in the proceedings after having paid over the sum of RM801,304.21 to the plaintiff. On 18 July, the defendant filed the present applications to set aside the judgment in default of appearance and set aside the various orders made on 12 June, 20 June and 3 July 1998 in the garnishee proceedings.

At the hearing of the two applications Mr Lim Heng Choo, learned counsel for the plaintiff, raised two preliminary objections. The first is that the application to set aside the default judgment is out of time and the second is that the application to set aside the garnishee order is not provided under O 49 of the Rules of the High Court 1980 ('the RHC'). Mr Ivan Ong, learned counsel for the defendant, had his objection as well, which is regarding the use of the two affidavits of Lee Yoke Ming dated 3 October 1998 that were filed on behalf of the plaintiff on the ground that Lee Yoke Ming is not a director of the plaintiff company.

Whether application to set aside the default judgment was out of time

Mr Lim argued that O 42 r 13 of the RHC provides that an application to set aside a default judgment must be made within 30 days of the receipt of the judgment. The said provision (which was added in 1993) reads:

> Where in these Rules provisions are made for the setting aside or varying of any order or judgment, a party intending to set aside or to vary such order or judgment must make his application to the Court and serve it on the party who has obtained the order or judgment within 30 days after the receipt of the order or judgment by him.

It was contended that judgment in default was served on the defendant on 19 June and the 30-day period expired on 18 July. Even though the summons in chambers to set aside the judgment in default was taken out on 18 July it was not served on the plaintiff until 29 July which, argued Mr Lim, was out of time. Mr Ong did not advert to that argument regarding the

construction of that rule. I am of the view that the said rule requires the application not only to be made within the said 30 days but that it must also be served within the said 30 days. This, the defendant had failed to do. However, Mr Ong argued that since the default judgment was irregular, having been entered for a sum in excess of what the defendant was actually owing, the defendant has a right ex debito justitiae to have it set aside and the time limit does not apply. Mr Ong referred to *Perwira Habib Bank Malaysia Bhd v Lum Choon Realty Sdn Bhd & Ors* [1992] 3 CLJ 263. That case only dealt with a judgment that was in excess of a defendant's liability and not with the said r 13 which came into being only after that case. The latest decision on ex debito justitiae is the case of *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393 at p 409, where the Federal Court held that one High Court has an inherent and discretionary jurisdiction to set aside an order of another High Court ex debito justitiae that contravened any written law rendering it illegal or for want of jurisdiction without having to go through the appeal procedure. In my view, it is implicit in that judgment that when the court exercises its inherent jurisdiction, the court is not fettered by the RHC, such as the time limit laid down for applying to set aside the order because the Federal Court, at p 409, per Mohd Azmi FCJ, said this:

> It is of course settled law as laid down by the Federal Court in *Hock Hua Bank*'s case that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. But one special exception to this rule (which was not in issue and therefore not discussed in *Hock Hua Bank*) is where the final judgment of the High Court could be proved to be null and void on ground of illegality or lack of jurisdiction so as to bring the aggrieved party within the principle laid down by a number of authorities culminating in the Privy Council case of *Isaacs v Robertson* [1985] AC 97 where Lord Diplock while rejecting the legal aspect of voidness and voidability in the orders made by a court of unlimited jurisdiction, upheld the existence of a category of orders of the court '... which a person affected by the order is entitled to apply to have set aside ex debito justitiae in the exercise of the inherent jurisdiction of the court, without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity, and give to the judge a discretion as to the order he will make'.
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> The Privy Council through Lord Diplock also emphasized that the courts in England have not closed the door as to the type of defects in the final judgment of the court that can be brought into the category that attracts ex debito justitiae the right to have it set aside without going into the appeal procedure, 'save that specifically it includes orders that have been obtained in breach of rules of natural justice'. Similarly in this country, the statement of Abdoolcader J (as he then was) in *Eu Finance Bhd v Lim Yoke Foo* [1982] 2 MLJ 37 at p 39 provides the correct guideline on the subject:
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> > 'The general rule is that where an order is a nullity, an appeal is somewhat useless as despite any decision on appeal, such an order can be successfully attacked in collateral proceedings; it can be disregarded and impeached in any proceedings, before any court or tribunal and whenever it is relied upon — in other words, it is subject to collateral attack. In collateral proceedings, the court may declare an act that purports to bind to be non-existent. In *Harkness v Bells' Asbestos and Engineering Ltd*

A [1967] 2 QB 729, Lord Diplock LJ (now a Law Lord) said (at p 736) that 'it has been long laid down that where an order is a nullity, the person whom the order purports to affect has the option either of ignoring it or of going to the court and asking for it to be set aside.'

For my part, I must hasten to add that apart from breach of rules of natural justice, in any attempt to widen the door of the inherent and discretionary B jurisdiction of the superior courts to set aside an order of court ex debito justitiae to a category of cases involving orders which contravened 'any written law', the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on ground of illegality or lack of jurisdiction. It should not for instance be applied to a defect in a final order which has contravened a procedural requirement of any written C law. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases, the normal appeal procedure should be adopted to set aside a defective order, unless the aggrieved party could bring himself within the special exception.

D Though Mohd Azmi FCJ there said that the order or judgment which is sought to be set aside must be one that is within the category of 'exceptional cases' where 'the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice', the learned judge was talking in terms of one High Court setting aside the order of E another High Court.

In any event, given the fact that the application to set aside the default judgment was filed within time, I would abridge the time regarding the service of the application so as to validate the service. I turn now to the substantive issue of whether the default judgment was irregular.

F *Whether default judgment was irregular*

The plaintiff in answer to the assertion of the defendant that they had paid the sum of RM101,642.22 on 9 April caused the following assertions to be made in an affidavit:

G In reply to paras 14 to 16 of the affidavit of Joo Seung Ha, I confirm that the plaintiff had received the sum of RM101,642.22 as part payment of the many outstanding claims besides the claims of RM768,024.05 in the writ of summons and statement of claim as exhibited in exh LYM 2 of my affidavit in opposition affirmed on 3 October 1998.

The plaintiff had never acknowledged the payment of RM101,642.22 as H part payment of the RM768,024.05.

Mr Lim then submitted that: 'Amount was paid for the continuous supply of labour and equipment. A continuous contract up to the day we file the claim'.

In the statement of claim, nine invoices are particularized and it is I stated that they represent the amounts outstanding, with the last invoice dated 23 February 1998. Therefore, it is clear that the plaintiff filed the claim based on amounts outstanding in a running account with the defendant. Therefore, it is inconceivable that the RM101,642.22 paid after

the statement of claim was filed did not constitute part payment of the overall debt claimed. Mr Lim's answer to this is that apart from the details stated in the statement of claim, there were other items outstanding. When I asked for the bills, he said that they were with his client. The defendant have stated in their affidavit in support that the said sum constitutes part payment and this is the mainstay of their defence that the judgment in default is irregular. Therefore, it is strange that the plaintiff had failed to exhibit evidence to support their argument that the said sum was payment towards other claims other than that stated in the statement of claim. In the event, I find that on the evidence available, the default judgment was in excess of what was due. The defence also argued that apart from this irregularity in the default judgment, they were disputing the invoices listed in the statement of claim as they did not approve the invoices and therefore reserved the right to dispute it. The averment is not challenged by the plaintiff. The thrust of the plaintiff's argument is that the defendant slept on their rights by delaying the application to set aside and to intervene in the garnishee proceedings. I note that the delay in this case is not inordinate. As the defendant has a defence on the merits, I do not think that it is proper to vary the judgment in default to take into account the part payment. I therefore set aside the default judgment wholly. In view of the conclusion I have taken of the matter, I find it unnecessary to go into the other issues raised by counsel in respect of capacity of the directors of the plaintiff to depose the affidavits in reply. It will be recalled that the plaintiff had already obtained payment from the garnishee of a sum in excess of what the default judgment allows. The defendant wants the whole sum to be repaid and hence the challenge to the validity of the garnishee order.

Whether application to set aside garnishee order proper

Mr Lim argued that the application to set aside the garnishee order is not provided for under O 49 of the RHC. He said that O 49 does not provide for an applicant to apply to vary or set aside a garnishee order. He said that before O 42 r 13 is invoked there must be a provision first to set aside the said order. He cited the case of *Malayan United Finance Bhd, Johore Bahru v Liew Yet Lan* [1990] 1 MLJ 317 where it was held that the ex parte application to extend time to complete a purchase of land was improper as the RHC did not provide for such an ex parte application. VC George J said as follows (at p 320):

> What is to be gleaned from this is that the policy and effect of the above rules is that the general rule is that all applications in chambers have to be made by summons inter partes other than applications specifically excluded by the rules from being so brought. Accordingly, there not being any provision anywhere which allows applications for extension of time to be made by an ex parte summons, it is my view that having encl 61 heard as an ex parte application was hearing the application by procedure independent of the Rules of the High Court 1980 and as such the order made is a nullity — see *Anlaby & Ors v Pretorius* (1888) 20 QBD 764 at pp 769–771 and *Syarikat Joo Seng & Anor v Habib Bank Bhd* [1986] 2 MLJ 129 at p 131.

Mr Ong for the defendant responded by saying that the plaintiff has taken a fresh step in the proceedings by filing affidavits in reply and therefore has waived any irregularity in proceedings. I think that Mr Ong had missed the

A essence of the submission by his learned friend which does not merely go into irregularity for want of strict compliance with the rules. It raises the question whether the application to set aside a garnishee order which has been made absolute is misconceived.

It is true that O 49 does not provide for an application to vary or set B aside a garnishee order made absolute. In the instant case, the garnishee appeared at hearing and objected to the application to make the order absolute but the senior assistant registrar made the order absolute. The defendant was not served with the show cause order. The order of the senior assistant registrar is not final in that it is appealable to the judge in chambers under O 56 r 1. An appeal was filed by the garnishee but was later C withdrawn. I am of the view that it is not improper for the defendant to apply to set aside the garnishee order in the instant case for the following reasons. The defendant was not served with the show cause notice as, under O 49 r 3, there is no need for the plaintiff to serve it on the defendant 'unless the court otherwise directs'. During the hearing before the senior assistant registrar, the defendant was not represented. Therefore the defendant had D no opportunity to dispute the garnishee proceedings. Mr Lim submitted that counsel for the garnishee was in contact with counsel for the defendant during the garnishee proceedings but there is no evidence of that. Mr Lim also submitted that counsel for the garnishee made submissions for the absentee defendant. I note from the notes of proceedings that the objection E of the garnishee during the hearing to show cause why the nisi order should not be made absolute was confined to the question whether it was proper for the plaintiff to have served the show cause notice at a branch apart from the registered office of the bank in Kuala Lumpur. The learned senior assistant registrar could have ordered that the defendant as the judgment debtor be served with the nisi order but she did not. I think that in spite of F the absence of any provision in O 49 for setting aside of an order absolute, the court is not deprived of the power to do so under O 92 r 4 in order to prevent injustice to any party. I am fortified in my conclusion by the case of *Hongkong and Shanghai Banking Corp v Goh Su Liat (Telecommunication Authority of Singapore, garnishee)* [1986] 2 MLJ 86. In that case, the G judgment debtor was not served with the garnishee notice and the garnishee did not object to the nisi order being made absolute before the senior assistant registrar. The judgment debtor later applied before the High Court judge to set aside the said order on the ground that the monies were not attachable at the relevant time as they had not become due. The judgment creditor objected to the proceedings on the ground that a garnishee H proceeding is between a judgment creditor and the garnishee only. Chua J said as follows:

> Counsel for the judgment creditor says that it is doubtful that the judgment debtor can come forward to dispute the debt when the garnishee is not disputing. He argues that a garnishee proceeding is between a judgment creditor and the garnishee only. As he puts it, 'the main fight is between the I garnishee and the judgment creditor'.

I am of the view that the judgment debtor has a right to apply to the court to set aside the garnishee order to show cause and the garnishee order absolute.

Order 49 r 3(1) provides that the order to show cause must, at least seven days before the time appointed thereby for the further consideration of the matter, be served not only on the garnishee but also on the judgment debtor unless the court otherwise directs. It seems to me that a judgment debtor can attend before the court to state his objection to the garnishee order nisi being made absolute. In this case the garnishee order to show cause was not served on the judgment debtor.

In any case, the court can hear the judgment debtor's application under its inherent powers and make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the court (O 92 r 4).

I share the same view expressed there that the court has an inherent jurisdiction to hear the application to set aside a garnishee order by the defendant where the facts of the case warrant it. The preliminary objection is therefore dismissed.

Mr Ong then submitted that the garnishee order absolute is irregular because the garnishee order provided for the payment of interest when the default judgment did not. Mr Lim said that since interest was prayed in the statement of claim, the court can now amend the judgment in default to include interest.

In so far as the statutory interest is concerned, the same can be claimed irrespective whether the same has been stated to be payable in the judgment (see the unreported case of *Pui Kueh Thai & Anor v South East Asia Insurance Bhd* Originating Summons No 24–148–97–I, 24 January 1998 (High Court, Kuching)). Therefore, in so far as the garnishee order provides for payment of statutory interest there is no question of irregularity. However, it also provides for prejudgment interest which the default judgment did not award and this is not in accordance with O 49 r 1 which states that the court may:

> ... order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

Since the garnishee order was for an amount in excess of the default judgment, it was irregular.

Conclusion

In the premises, I order that: (i) the default judgment dated 14 May 1998 be set aside; (ii) the defendant enter their appearance and file their defence within 14 days hereof; (iii) the garnishee order dated 20 June 1998 be set aside; (iv) the plaintiff shall repay the defendant the sum of RM801,304.21 that was paid over by the garnishee to the plaintiff out of the account of the defendant; and (v) there will be costs to the defendant in respect of both the applications.

Order accordingly.

Reported by Wong Siok Chin